

MINUTES
Texas Board of Health Meeting
November 21 - 22, 2002

The November 21-22, 2002 meeting of the Texas Board of Health (Board) was called to order at 1:35 p.m., at the Texas Department of Health (department), 1100 West 49th Street, Room M-739, Austin, Texas. Mario R. Anzaldua, M.D., Chair, presided. A quorum was present with members, George H. McCleskey, Vice-Chair, Raymond Hannigan, Margo Scholin, B.S.N., M.S., J.D., and Amanullah Khan, M.D., Ph.D., in attendance.

Registered Guests

Greg Herzog, TAFP
Richard Ponder, Johnson & Johnson
Elizabeth Priebe, Texas Midwifery
Shannon Patuff, Jr., RFCI
Susan Griffin, Texas Medical Association
Marsha Jones, Texas Children's Hospital
David Kinsey, Health and Human Services Commission
Myra Leo, Hughes Luce
Candie Phipps, TAP Pharmaceutical
Lynne Loeffler, Midwifery Board Rules Revision Committee
Jack Youngblood, Texans for Midwifery
Laurie Sorrenson, Texas Optometric Association
Esther Guerra
Regina Martin, Legislative Budget Board
Beverly Jimmerson, Strategic Partnership, Inc.
Faith Beltz, Consumer
Edna Dougherty, Advocate, Valley Midwives
B. J. Avery, Texas Optometric Association
Jeff Grigsby, Texas Optometric Association
Jennifer L. Bennett, Consumer, Midwife
Lois Palermo, Texas Dental Hygienist Association
Catherine Beckley, The Cosmetic, Toiletry and Fragrance Association
Roy Hogan, RLH & Associates
Erin Jones, OZ Systems
Carrie Kroll, Texas Pediatric Society
Gail Johnson, Texas Midwifery Board
Fred Favis, Texas Midwifery Board
Bruce Bauer, Texas Welfare Reform Organization
Laura Salredo
Susan Jenkin, Association of Texas Midwives
Kari Anne Light, President, Texans for Midwifery
Jack Erskine
Cathy Beckley, CTFA
Matt Wall, Texas Hospital Association
Sam Stone, Texas Wholesale Druggists Association
John Heil, True Core
Karen Reagan, Texas Federation of Drug Stores
B. Sandle
Gary Cacciatore, Cardinal Health, Inc.
Ernie Schmid, Texas Hospital Association
Sandra Cashe, Walsh Southwest
Paul F. Davis, Texas Pharmacy Association

Dr. Anzaldua welcomed guests. Also in attendance at the meeting were Eduardo J. Sanchez, M.D., M.P.H., Commissioner of Health, and other key staff members of TDH.

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY MS. SCHOLIN, THE MINUTES OF THE OCTOBER 18, 2002 TEXAS BOARD OF HEALTH MEETING WERE APPROVED.

A resolution was presented in recognition of World AIDS Day to focus on eliminating the stigma and discrimination surrounding HIV and AIDS. (*Attachment I*)

A resolution was presented in recognition and endorsement of the work of the Texas State Strategic Health Partnership and declaring twelve priority goals for improving the health status of Texas and the Texas health system by the year 2010. Dr. Sanchez accepted the resolution on behalf of the Steering Committee of the State Strategic Health Partnership, TDH staff who worked with the committee, all of the partners and the people of Texas. (*Attachment II*)

It was announced that an exemplary service award has been presented to Texas Department of Health by the Centers for Disease Control for testing the National Public Health Performance Standards and for showing leadership among states in recommending potential improvements to those standards. (*Attachment III*)

Dr. W. S. Riggins, Jr., M.D., M.P.H., Director, Public Health Region 8, presented a Certificate of Completion for Training from the Residency Training Program to Sandra Guerra-Cantu, M.D., M.P.H. (*Attachment IV*)

Dr. Sanchez spoke regarding recent activities as Commissioner and presented the Commissioner's Report. Dr. Sanchez recognized Dennis and Penny Finuf for their combined 43 years of state service upon their retirement. (*Attachments V*)

Susan Penfield, M.D., Chief, Bureau of Disease Control, presented a report on the Hepatitis C Plan. This plan was mandated by Senate Bill 338, 77th Legislative Session, for TDH to develop a state plan for and continuing education relating to the prevention and treatment of Hepatitis C. (*Attachments VI*)

Mr. Mike Montgomery, Chief, Bureau of Nutrition Services, presented a brief update on the progress on the Electronic Benefits Transfer (EBT) Project, a significant business improvement process for the delivery

of food benefits that are one of the four benefits from the Special Supplemental Nutrition Program for Women, Infants & Children (WIC). (*Attachments VII*)

Ronald J. Dutton, Ph.D., Director, Office of Border Health, presented an update on Texas-Mexico border health activities to date including the US-Mexico Border Health Commission, US-Mexico Border Governors Conference and TDH Office of Border Health Activities. (*Attachments VIII*)

Ms. Barbara Keir, Director, Public Health Nutrition Services, Bureau of Nutrition Services, presented an update on efforts at TDH, as a result of an obesity grant that was received three years ago from the Centers for Disease Control, to conduct school-based nutrition and physician activity interventions and develop a Strategic Plan for Prevention of Obesity in Texas. (*Attachments IX*)

Dr. Anzaldúa commended the collaborative efforts made in working across programs to accomplish the goals as presented in the Strategic Plan for Prevention of Obesity in Texas.

Rick Danko, Dr.P.H., presented an update on the Texas State Strategic Health Partnership's planning process. The seventeen members of the Public Health Improvement Steering Committee have met several times with public health partners and have developed public health improvement goals and activities to undertake these goals by 2010. The last meeting of the year will be on December 4, 2002 to define an action plan for next steps. (*Attachments X*)

Dennis Perrotta, Ph.D., CIC, presented an update on the Centers for Disease Control (CDC) and Hospital Preparedness grants and an update on the Health Resources and Services Administration bioterrorism hospital preparedness program. Included in the update were positive results from a recent CDC site visit and review, training received from the National Pharmaceutical Stockpile officials, work on a smallpox pre-event vaccination program plan deadline of December 1st for a post-event mass vaccination effort, and staffing of regional offices with staff to be a front-line response. Ms. Mary Soto provided an update on progress by the regions and local health departments on the required benchmarks of the bioterrorism and public health preparedness funds. (*Attachments XI*)

Dr. Sanchez announced that Ms. Mary Soto has recently been named the Director of the Office of Public Health Practice.

Mr. Mark Scott, Director, Internal Audit, presented information on the Internal Audit Division annual report that reflected an increase in productivity. (*Attachments XII*)

Mr. Ben Delgado, Deputy Commissioner for Administration, presented a status report on the progress toward the implementation of the Health & Human Services Administrative Systems (HHSAS) for Human Resources Management Systems (HRMS). Mr. Delgado acknowledged the twenty six HHSAS staff for their

dedication to this project. Ms. Machele Pharr, Chief Financial Officer, spoke regarding the financial issues and improvements that have been made. (*Attachment XIII*)

Dr. Anzaldua announced a recess at 3:15 p.m., on Thursday, November 21, 2002.

Dr. Anzaldua reconvened the meeting at 3:30 p.m., on Thursday, November 21, 2002. Other Board members in attendance were Mr. Raymond Hannigan, Dr. Amanullah Khan, Ms. Margo Scholin and Mr. McCleskey.

Mr. Gary R. Bego, Chief Operating Officer, presented an update on the Sunset Advisory Commission (SAC) special purpose review and the activities of the Business Improvement Team. The department has continued to work with the State Auditor's Office and the SAC regarding the implementation of their recommendations. There will be a hearing regarding these recommendation on either December the 10th or 11th. Mr. Bego introduced a new member to the Business Improvement Team, Ms. Elaine Powell, Director of the Office of Business Improvement. (*Attachment XIV*)

Ms. Machele Pharr, Chief Financial Officer, presented the final Quarterly Financial Report for State Fiscal Year 2002. The report includes all funds expended or encumbered as of September 30, 2002. Mr. Al Beavers, Historically Underutilized Businesses (HUB) Office, presented the HUB report. Mr. Tim Horn, Laboratory Construction and Leasing, announced that completion of the Laboratory occurred on October 11, 2002. About one third of staff have moved in with the rest of staff and equipment to be moved in by the middle of January 2003. The Health and Human Services Priority Initiatives Report update was given by Mr. Ben Delgado. (*Attachment XV*)

Ms. Susan K. Steeg, General Counsel, presented the Memorandum of Understanding between the Health and Human Services Commission and the Texas Board of Health Regarding Policymaking Authority for consideration for approval. This is required on a yearly basis by HB 2641, 76th Legislature. (*Attachment XVI*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE MEMORANDUM OF UNDERSTANDING BETWEEN THE HEALTH AND HUMAN SERVICES COMMISSION AND THE TEXAS BOARD OF HEALTH EFFECTIVE THROUGH AUGUST 31, 2003.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval to continue the Family Planning Advisory Committee, including current membership, through the effective date of the adoption of the family planning program final rules which will be presented at the January 2003 Board of Health meeting.

(Attachment XVII)

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE CONTINUANCE OF THE FAMILY PLANNING ADVISORY COMMITTEE, INCLUDING CURRENT MEMBERSHIP, THROUGH THE EFFECTIVE DATE OF THE ADOPTION OF THE FAMILY PLANNING PROGRAM FINAL RULES.

Ms. Jeanette Hilsabeck, Program Administrator, Medical Radiologic Technologist Program, Professional Licensing and Certification Division, presented appointments for four vacant positions on the Medical Radiologic Technologist Advisory Committee. *(Attachment XVIII)*

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE FOLLOWING APPOINTMENTS TO THE MEDICAL RADIOLOGIC TECHNOLOGIST ADVISORY COMMITTEE:

- MARK A. BAKER, M.D., RADIOLOGIST, TERM EXPIRES JANUARY 1, 2007
- JEFFREY L. JOHNSON, DIAGNOSTIC RADIOGRAPHER, TERM EXPIRES JANUARY 1, 2005
- JANET L. CHAMPAGNE, NUCLEAR MEDICINE, TERM EXPIRES JANUARY 1, 2007
- RONNIE G. LOZANO, RADIATION THERAPY EDUCATOR, TERM EXPIRES JANUARY 1, 2009

Ms. Jennifer Smith, Director, Cardiovascular Health and Wellness Program, presented appointments for five vacant positions on the Texas Council on Cardiovascular Disease and Stroke. *(Attachment XIX)*

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE FOLLOWING APPOINTMENTS TO THE TEXAS COUNCIL ON CARDIOVASCULAR DISEASE AND STROKE.

- WALTER F. BUELL, M.D., NEUROLOGIST, TERM EXPIRES FEBRUARY 1, 2009
- MICHAEL M. HAWKINS, M.D., MEDICAL DIRECTOR, TERM EXPIRES

FEBRUARY 1, 2007

- MELBERT C. (BOB) HILLERT, M.D., CARDIOLOGIST, TERM EXPIRES FEBRUARY 1, 2009
- SUZANNE LOZANO, R.N., QUALITY IMPROVEMENT RESOURCES, TERM EXPIRES FEBRUARY 1, 2009
- THOMAS E. TENNER, PH.D., PROFESSOR OF PHARMACOLOGY, TERM EXPIRES FEBRUARY 1, 2009

Ms. Margaret Mendez, Chief, Bureau of Women's Health, presented appointments for seven vacancies on the Osteoporosis Advisory Committee. (*Attachment XX*)

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE FOLLOWING APPOINTMENTS TO THE OSTEOPOROSIS ADVISORY COMMITTEE:

- WIKI ERICKSON, CONSUMER, TERM EXPIRES DECEMBER 31, 2008
- GLORIA HICKS, CONSUMER, TERM EXPIRES DECEMBER 31, 2006
- DEBORAH KAERCHER, CONSUMER, TERM EXPIRES DECEMBER 31, 2004
- SHARON MARSHALL, CONSUMER, TERM EXPIRES DECEMBER 31, 2004
- ANDREW EISENBERG, NON-CONSUMER, TERM EXPIRES DECEMBER 31, 2008
- MARJORIE JENKINS, NON-CONSUMER, TERM EXPIRES DECEMBER 31, 2008
- JOSE LOERA, NON-CONSUMER, TERM EXPIRES DECEMBER 31, 2008

Ms. Peggy Belcher, Office of Health Information and Analysis, requested approval of a proposed rule concerning the establishment of the State Preventive Health Advisory Committee whose purpose would be to advise the Board and TDH regarding activities to be supported with Preventive Health and Human Services Block Grant funds, the conduct of needs assessments, the allocation of payments, and the collection of data. This rule delineates the establishment, structure and composition of the committee. (*Attachment XXI*)

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE PROPOSED RULE CONCERNING THE STATE PREVENTIVE HEALTH ADVISORY COMMITTEE FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY

COMMENT PERIOD.

Mr. John Scott, Privacy Officer, requested approval for a new section of a proposed rule concerning the privacy of health information which establishes TDH procedures to allow individuals to exercise their rights under the federal Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations Parts 160 and 164, and the Health and Safety Code, Chapter 181. (*Attachment XXII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE PROPOSED RULE CONCERNING THE PRIVACY OF HEALTH INFORMATION FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

I. Celine Hanson, M.D., Chief, Bureau of HIV/STD Prevention, requested approval of proposed rules concerning sexually transmitted diseases including acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV). (*Attachment XXIII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV) FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Jerry W. Felkner, D.D.S., M.P.H., State Dental Director, Division of Oral Health, requested approval of proposed rules concerning the Oral Health Improvement Services Program. The proposed amendments are necessary in order to update terminology, add necessary definitions and standards, and clarify the intent of the rules. (*Attachment XXIV*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE ORAL HEALTH IMPROVEMENT SERVICES PROGRAM FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Mike Montgomery, Chief, Bureau of Nutrition Services, requested approval of a proposed amendment to a rule concerning the selection of allowable foods for authorization by the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). (*Attachment XXV*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC) FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Teresa Willis, Program Director, Texas Childhood Lead Poisoning Prevention Program, Bureau of Epidemiology, requested approval of proposed rules concerning childhood lead reporting which require all blood levels to be reported, clarify when to report, change reporting of blood lead levels to 40 micrograms per deciliter immediately to the department to a specified phone number, and clarify that race and ethnicity are reported separately. (*Attachment XXVI*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED THE PROPOSED RULES CONCERNING CHILDHOOD LEAD REPORTING FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Susan E. Tennyson, Chief, Bureau of Food and Drug Safety, requested approval of a proposed rule concerning minimum guidelines for human donor milk banks which includes a new section that adopts by reference the, "Guidelines for the Establishment and Operation of a Donor Human Milk Bank," written by the Human Milk Banking Association of North America. (*Attachment XXVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED A PROPOSED RULE ADOPTING BY REFERENCE THE "GUIDELINES FOR THE ESTABLISHMENT AND OPERATION OF A DONOR HUMAN MILK BANK," FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Yvonne Feinleib, Program Administrator, Professional Licensing and Certification Division, requested approval of proposed rules concerning the documentation and regulation of midwives. These rules constitute the Texas Midwifery Board's review of all agency rules pursuant to the Government Code, Chapter 2001, Administrative Procedure Act. (*Attachment XXVIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE DOCUMENTATION AND REGULATION OF MIDWIVES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 60-DAY COMMENT PERIOD.

..... Ms. Scholin commented that the Board would like to move ahead on these rules and requested staff do a study of what has been presented. Dr. Anzaldua commented that he had received public comment regarding safety issues and protocols. He said he would like to see some clarification and agreement as to what is a standard of care.

Dr. Anzaldua called for discussion and recognized persons to give public comment.

Ms. Gail Johnson, member of the Texas Midwifery Board (TMB), spoke as a midwife and not as a member of TMB. She is in favor of the proposed new midwifery rules as submitted by the rules revision committee and approved by TMB. She stated that the Texas Medical Association (TMA) is against the updated rules and they have delayed the rule process.

Ms. Susan Jenkins, Attorney for the Association of Texas Midwives, spoke regarding the rules process and TMA's actions during this process over the last fifteen months or more. She has received a copy of a letter the Board received yesterday from TMA and asked to go on the record that she wished TMA would also act on the record by filing things like this letter when it is appropriate during the public comment period. She urged the Board to not allow TMA and other medical societies to use the TDH rule process to destroy

midwifery in the state.

Ms. Kari Anne Light, President, Texans for Midwifery, spoke in favor of the proposed midwifery rules by requesting they be considered as well as the comments received. She added that TMA's participation has been invited and encouraged, but they have chosen not to participate.

Ms. Elizabeth Priebe, doula and childbirth educator, spoke in favor of the proposed midwifery rules and stated she has been on the rules committee for a year and a half. She has experienced three home births and three hospital births and testified that midwifery is very skilled in normal births.

Ms. Faith Beltz, consumer of midwifery, spoke in favor of the proposed midwifery rules. She stated that her home birth experience with a midwife was more positive than her experience with the hospital birth using an obstetrician. She feels midwives are better trained for normal births. She said she personally witnessed TMA doctors' behavior of belaboring every word in the rules and abstaining to participate in meetings.

Mr. Alan Morris, Director, Toxic Substances Control Division, requested approval of amendments to the Texas Environmental Lead Reduction Rules concerning the certification, accreditation and standards for lead-based paint activities in target housing and child-occupied facilities. (*Attachment XXIX*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE CERTIFICATION, ACCREDITATION AND STANDARDS FOR LEAD-BASED PAINT ACTIVITIES IN TARGET HOUSING AND CHILD-OCCUPIED FACILITIES, FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. E. Alan Morris, Director, Toxic Substances Control Division, Bureau of Environmental Health, requested approval of proposed rules concerning the Texas Asbestos Health Protection Rules, which establish the means of control and minimization of public exposure to airborne asbestos fibers by regulation of asbestos disturbance activities in buildings. (*Attachment XXX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE TEXAS ASBESTOS HEALTH

PROTECTION RULES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Karen Tannert, RPh., Chief Pharmacist, Drugs and Medical Device Division, requested approval of the proposed rules concerning the donation of unused drugs to charitable medical clinics and foreign countries. (*Attachment XXXI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE DONATION OF UNUSED DRUGS TO CHARITABLE MEDICAL CLINICS AND FOREIGN COUNTRIES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Derek J. Jakovich, Director, Licensing and Enforcement Division, Bureau of Food and Drug Safety, requested the repeal and new rule concerning the assessment of administrative penalties against food and drug operations. (*Attachment XXXII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE PROPOSED REPEAL AND NEW RULE CONCERNING THE ASSESSMENT OF ADMINISTRATIVE PENALTIES AGAINST FOOD AND DRUG OPERATIONS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Heather Meur, Administrator, Contact Lens Dispensing Program, requested approval of proposed rules concerning the regulation of persons filling contact lens prescriptions. Chapter 128 was reviewed in its entirety and determined that reasons for adopting the sections continue to exist; however, the need to reorganize and modify the existing sections warranted the repeal and proposed new sections. Due to opposition received this week, amendments have been made that delete controversial time limits. (*Attachment XXXIII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE REGULATION OF PERSONS FILLING CONTACT LENS PRESCRIPTIONS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 60-DAY COMMENT PERIOD.

and Drug Safety, requested approval of a proposed rule concerning meat and poultry inspection. The proposed change increases the fee per hour for overtime inspection services and special, non-mandated services provided to establishments. (*Attachment XXXIV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED A PROPOSED RULE CONCERNING MEAT AND POULTRY INSPECTION FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Ruth E. McBurney, CHP, Division Director, Bureau of Radiation Control, requested approval of a proposed rule concerning general provisions for radioactive material. (*Attachment XXXV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED A PROPOSED RULE CONCERNING GENERAL PROVISIONS FOR RADIOACTIVE MATERIAL FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Ruth E. McBurney, CHP, Division Director, Bureau of Radiation Control, requested approval of a proposed rule concerning radiation safety requirements for well logging service operations and tracer studies. (*Attachment XXXVI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED A PROPOSED RULE CONCERNING RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING SERVICE OPERATIONS AND TRACER STUDIES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Dr. Anzaldua announced a recess at 6:05 p.m., on Thursday, November 21, 2002.

Dr. Anzaldua reconvened the meeting at 8:30 a.m., on Friday, November 22, 2002. Other Board members in attendance were Mr. Raymond Hannigan, Mr. George McCleskey, Dr. Amanullah Khan and Ms. Margo Scholin.

Ms. Ruth E. McBurney, CHP, Division Director, Bureau of Radiation Control, requested approval of final adoption of a rule concerning the licensing of uranium recovery and byproduct material disposal facilities. (*Attachment XXXVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE LICENSING OF URANIUM RECOVERY AND BYPRODUCT MATERIAL DISPOSAL FACILITIES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Ruth E. McBurney, CHP, Division Director, Bureau of Radiation Control, requested approval of final adoption of a rule concerning the licensing of radioactive material. (*Attachment XXXVIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE LICENSING OF RADIOACTIVE MATERIAL TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Ruth E. McBurney, CHP, Division Director, Bureau of Radiation Control, requested approval of final adoption of a rule concerning the licensing of radioactive waste processing and storage facilities. (*Attachment XXXIX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE LICENSING OF RADIOACTIVE WASTE PROCESSING AND STORAGE FACILITIES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF

STATE.

Ms. Susan E. Tennyson, Chief, Bureau of Food and Drug Safety, requested final adoption of the repeal and new rules concerning the regulation of food, drug, device, and cosmetic salvage establishments and brokers. The new rule will implement the provisions of House Bill 915, 77th Legislature (2001), and will provide instructions to licensed drug manufacturers and wholesale drug distributors to report the average manufacturer price and actual price of drugs sold in Texas. (*Attachment XL*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING THE REPEAL AND NEW RULES CONCERNING THE REGULATION OF FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ESTABLISHMENTS AND BROKERS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Dr. Anzaldua called for discussion and recognized persons to give public comment.

Mr. Matt Wall, Associate General Counsel, Texas Hospital Association (THA), stated that the Board of Health, Drugs and Medical Device Division, and the Texas Organization of Rural and Community Hospitals had been given a letter last week from THA addressing their concern. They have expressed their concern since the beginning of the rulemaking process at the Stakeholders Meeting in September of 2001 and feel that licensed hospitals wanting to convey distressed devices amongst hospitals should be exempt from both the salvage broker and salvage establishment license requirements. Their concern is that this rule does not recognize there may be situations where hospitals, by virtue of their expertise and their licensure, would be able to convey and then fix distressed devices.

A discussion followed among Board members, Mr. Matt Wall, Ms. Tennyson, Mr. John Evans, Director, Hospital Licensing, and Ms. Susan K. Steeg, General Counsel, regarding the fact that TDH does not have the authority in the statute to exempt hospitals from this requirement. Possible alternatives for hospitals were also discussed.

Ms. Susan E. Tennyson, Chief, Bureau of Food and Drug Safety, requested final adoption of a new rule concerning average manufacture price and purchase price reporting for pharmaceuticals. The rule clarifies that the pricing information, which is reported on a monthly basis, will be for the sole use of the Interagency Council on Pharmaceuticals Bulk Purchasing. (*Attachment XLI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING A NEW RULE CONCERNING THE AVERAGE MANUFACTURE PRICE AND PURCHASE PRICE REPORTING FOR PHARMACEUTICALS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Dr. Anzaldua called for discussion and recognized persons to give public comment.

Mr. Sam Stone, Attorney, Texas Wholesale Drug Association, spoke saying they do not object to the rules. They are concerned about confidentiality and request the adoption be delayed until after the legislative session and the Attorney General's Office has had a chance to state their opinion whether the state laws allow the clear intent of the legislature that all data be confidential and not subject to an open records request.

A discussion followed among Board members, Mr. Sam Stone, Mr. Joe Walton, Chair of the Interagency Council on Pharmaceuticals Bulk Purchasing, Dr. Bell and Ms. Susan K. Steeg, General Counsel, regarding the confidentiality issues.

MR. MCCLESKEY MOTIONED AND MR. HANNIGAN SECONDED THE MOTION TO APPROVE AN AMENDMENT CHANGING THE EFFECTIVE DATE TO JULY 1, 2003, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE. ALL WERE IN FAVOR.

Dr. Anzaldua called for discussion and recognized persons to give public comment.

Mr. Paul Davis, Texas Pharmacy Association, stated that he has nothing to add except that their association is in support of the delay.

Ms. Sandra Taylor-Cashe, Walsh Southwest, Texas Wholesale Drug Association, Healthcare Distribution Management Association, said that she doesn't have additional comments. She stated that

given the amended motion and vote, they appreciate the Board's consideration.

Mr. Derek J. Jackovich, Director, Licensing and Enforcement Division, Bureau of Food and Drug Safety, requested final adoption of the repeal and new rule concerning the processing of license/permit applications relating to food and drug operations. (*Attachment XLII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING THE REPEAL AND NEW RULE CONCERNING THE PROCESSING OF LICENSE/PERMIT APPLICATIONS RELATING TO FOOD AND DRUG OPERATIONS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. Alan Morris, Director, Toxic Substance Control Division, requested final adoption of rules concerning voluntary indoor air quality guidelines for government buildings. These rules expand the scope of TDH to government buildings and include public schools. (*Attachment XLIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED AN ORDER ADOPTING THE RULES CONCERNING VOLUNTARY INDOOR AIR QUALITY GUIDELINES FOR GOVERNMENT BUILDINGS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Yvonne Feinleib, Program Administrator, Professional Licensing and Certification Division, requested approval of final rules concerning the registration of sanitarians. The amendment and new rule cover fee increases and streamlining of the process for approval of continuing education programs respectively.

(Attachment XLIV)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED AN ORDER ADOPTING THE RULES CONCERNING THE REGISTRATION OF SANITARIANS TO BE EFFECTIVE JANUARY 1, 2003, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jan Pelosi, Director, Immunization Division, requested final adoption of rules concerning the addition of invasive infections of *Streptococcus pneumoniae* to the list of reportable conditions in Texas. *(Attachment XLV)*

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING THE RULES CONCERNING THE ADDITION OF INVASIVE INFECTIONS OF *STREPTOCOCCUS PNEUMONIAE* TO THE LIST OF REPORTABLE CONDITIONS IN TEXAS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jan Pelosi, Director, Immunization Division, requested final adoption of rules concerning consent for immunization and statewide immunization of children by hospitals, physicians, and other health care providers. The revisions clarify the rules and forms have been updated for the consent for immunizations to a minor. *(Attachment XLVI)*

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING THE RULES CONCERNING CONSENT FOR IMMUNIZATIONS AND STATEWIDE IMMUNIZATION OF CHILDREN BY HOSPITALS, PHYSICIANS, AND OTHER HEALTH CARE PROVIDERS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Margaret Drummond-Borg, M.D., Director, Genetic Screening and Case Management Division, requested final adoption of rules concerning the Newborn Screening Program. After review of the sections, TDH has determined that reasons for readoption of all the sections continue to exist. (*Attachment XLVII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING THE RULES CONCERNING THE NEWBORN SCREENING PROGRAM TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested final adoption of a rule concerning the Oral Health Services Advisory Committee. The committee has been reviewed and evaluated, and it was determined that the committee should continue in existence until January 1, 2007. (*Attachment XLVIII*)

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE ORAL HEALTH SERVICES ADVISORY COMMITTEE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested final adoption of a rule concerning the Prostate Cancer Advisory Committee. The committee has been reviewed and evaluated, and it was determined that the committee should continue in existence until September 1, 2003. (*Attachment XLIX*)

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE PROSTATE CANCER ADVISORY COMMITTEE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Linda Wiegman, Deputy General Counsel, requested final repeal of rules concerning federal laws

on administrative services. The repeals are necessary because the sections are obsolete. (*Attachment L*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING THE REPEAL OF RULES CONCERNING FEDERAL LAWS AND REGULATIONS CONCERNING ADMINISTRATIVE REQUIREMENTS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Joan Carol Bates, Assistant General Counsel, requested approval of the final repeal and new rule concerning a petition for adoption of a rule. The existing rule is being replaced by a new rule which will inform individuals of how to petition the Board of Health for a rule in compliance with the requirements of Government Code, §2001.021. (*Attachment LI*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING PROCEDURES FOR HANDLING REQUESTS FOR PUBLIC INFORMATION TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Susan K. Steeg, General Counsel, requested final rules concerning procedures and policies of the Board of Health pertaining to meetings of the board, actions requiring board approval, and the Commissioner of Health. The amendments will provide flexibility on some issues and clarification of other issues. (*Attachment LII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING PROCEDURES AND POLICIES OF THE BOARD TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

There were no public comments.

Dr. Anzaldua announced the next meeting of the Texas Board of Health will be held on Thursday, January 16, 2003, in Austin.

The meeting was adjourned on Friday, November 22, 2002, at 10:18 a.m.

APPROVED: January 16, 2003

George H. McCleskey, Chair
Texas Board of Health

Date